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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,449	12/12/2003	Shawn David Roman	5490-259COB	2026

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HARNESSE, DICKEY & PIERCE, P.L.C.  
P.O. BOX 828  
BLOOMFIELD HILLS, MI 48303

EXAMINER
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SHAFFER, RICHARD R

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,449	<b>Applicant(s)</b> ROMAN ET AL.	
	<b>Examiner</b> Richard R. Shaffer	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 7,9,16,17 and 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,10-15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/22/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Election/Restrictions***

Applicant's election with traverse of Group I, Species of Figure 15, and all components made of non-resorbable material in the reply filed on December 15<sup>th</sup>, 2006 is acknowledged. The traversal is on the ground(s) that is the method and apparatus as do the species have similarities. This is not found persuasive because in regard to the method and apparatus, the apparatus can be used in walls among other things as blind rivets. Clearly, such a device would not be useful when searching for the method. Therefore the two searches would require different searches and different thought processes to examine. As for the species requirement, there are structural differences deemed patently distinct at this time. Of course, should the species later be deemed obvious variants, then one or more may be rejoined. In the meantime, applicant is reminded that a statement that one or more embodiments are obvious over one another would be sufficient to rejoin at this time or should a generic claim be allowable, that such species claims non-elected will be rejoined.

The requirement is still deemed proper and is therefore made FINAL.

Claims 7, 9, 16, 17 and 21-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 15<sup>th</sup>, 2006.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 8, 10-15 and 18-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,685,707. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two sets of claims lies in the fact that the patent claims includes many more elements and is thus more specific than the application claims. It has been held that the generic invention is anticipated by the species. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the adjacent members" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 10 and 12-15 rejected under 35 U.S.C. 102(b) as being anticipated by Hopf (US Patent 5,814,046).

Hopf discloses a device (**Figures 3 and 5**) comprising: a cap (**23**); a base (**3**); a threaded/ribbed (**11**) post (**1**) rotatably attached to the base and cap; the post (**1**) having a keyed section (**12**) with a torque-limiting section (where **12** turns to **11**) inherently preventing a level of over tightening of the cap relative to the base; and an applier (**14**, **Figure 5**) having a keyed bore (**28**) to interact with the keyed section (**12**) of post (**1**).

Claims 1, 8, 10-12 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lerch (US Patent 6,068,631).

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Lerch discloses a device comprising: a cap (**22** with teeth **223**); a base (**21**); a post (**112**, **Figure 7**) having a ribs (**112c**) and a torque limiting feature (deep indent between ribs); and the device made of titanium (**Column 1, Line 66 through Column 2, Line 8**).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, 10-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuras (US Patent 6,585,739) in view of Bremer et al (US Patent 6,022,351).

Kuras discloses a device (**Figures 1-9**) comprising: a cap (**50**) with teeth (**92**); a base (**44**); a threaded/ribbed post (**46/250**) with a keyed section (**142**) to receive an applier (**Column 4, Lines 40-42**); and the device made of titanium (**Column 3, Lines 15-18**).

Kuras discloses all of the claimed limitations except is silent of a torque-limiting feature. It is well-known in the art to use torque-limiting, force limiting, and/or frangible components to limit the force in tightening components, such as taught by Bremer et al (**Column 4, Lines 44-48**). Bremer et al explicitly state that the post element can have at least one weakened section of significantly less thickness to prevent over tightening thereby preventing ratchet teeth from breaking. As seen in Kuras, ratchet teeth and

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threaded engagement are both anticipated and interchangeable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide for at least one weakened section to the embodiments of Kuras to prevent over tightening and damaging the needed fixation components of the post (46/250).

It would have further been a matter of design choice to one having ordinary skill in the art at the time of the invention to choose where such break points are located such as where the keyed section meets the rest of the shaft. Applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configuration a person of ordinary skill in the art would find obvious in order to provide for a means to prevent over tightening. *In re Dailey and Eilers*, 149 USPQ 47 (1966).

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hopf.

Hopf discloses all of the claimed limitations except for the device made of non-resorbable titanium. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the device of titanium, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer  
March 9<sup>th</sup>, 2007



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER